IN THE HIGH COURT OF JUDICATURE AT BOBBY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3863 OF 2006

D.K.Purkar and another Petitioners
versus
Arun Atmaram Deore & others Respondents

R.M.Hardas i/by Kishor S. Patil for petitioners
Ms.Manjiri Paranis i/by G.S.Godbole for R-1.

CORAM : R.M.S.KHANDEPARKAR, J.

DATE : 06th November 2006

PC :

1. The petitioner challenges the order passed by the School Tribunal, Nashik in Appeal No.5 of 2004 which was filed by the respondent no.1 herein. The first ground of challenge is that the Tribunal erred in ignoring the fact that respondent no.1 had abandoned the services from June 2001 and inspite of three letters/notices sent to report to the duties, he had failed to comply with the said notices, and the appeal was filed nearly about two years after the date of abandonment of service. It is further contended that the respondent no.1 had abandoned the services on account of refusal on the part of

Education Officer to grant approval to his appointment. The learned advocate appearing for the petitioner has further contended that the very fact that the respondent no.1 had admitted that he had changed his residential place, goes to show that the management had served notices on proper address which was known to the management, and, therefore, the presumption of service of the notice ought to have been drawn, which has been totally ignored by the Tribunal. Further, drawing attention to the finding of the Tribunal which refers to its earlier order dated 12th August 2004, it was contended that the Tribunal has failed to take into consideration the materials on record by ignoring the issue of service of notice on the respondent no.1 and abandonment of service by the respondent no.1 himself.

2. As regards the finding by the Tribunal with reference to its earlier order dated 12th August 2005, undoubtedly and as rightly submitted by the petitioner’s advocate, could not be a justification for arriving at a finding about failure on the part of the management to establish abandonment of service by the petitioner. Nevertheless, the fact remains that

the petitioner has not been able to establish before the School Tribunal that actually there were three notices sent to the respondent no.1, as has been claimed by the petitioner. Inspite of repeated query on this aspect, learned advocate for the petitioner has not been able to point out any evidence on record which would disclose actual sending of three notices to the respondent no.1. In the absence of any such evidence, no fault can be found with the order of Tribunal under which the theory of sending of notices by the petitioner to the respondent no.1 has been disbelieved. Indeed, there was absolutely no evidence placed on record by the petitioner about the theory of abandonment of service by the respondent no.1. The employee, who has challenged the oral order of termination of his services by the petitioners and termination being on the ground of refusal on the part of Education Officer to grant approval to his post, it is difficult to believe that such an employee would abandon the services. The very fact that the employee has challenged the order discloses that he had no intention of abandoning the service.

3. The impugned order is also challenged on the

ground that there was a delay in filing the appeal and in fact the appeal was filed about two years after the order of oral termination. Merely because there was a delay in filing the appeal, that itself cannot be a ground to believe the theory of abandonment of service advanced by the petitioner. Undisputedly, by the order dated 12th August 2004 the delay in filing the appeal was condoned. The said order is not under challenge in this petition.

4. The impugned order is also challenged on the ground that the Tribunal could not have ordered payment of back wages for the entire period. It is well settled that the direction for payment of back wages, should depend on the facts and circumstances of each case. In the case in hand, it has been the case of the employee that he was not allowed to attend to his duties and his services were orally terminated. Believing the employee’s version the Tribunal has set aside the oral order of termination of service and he has been directed to be reinstated in the service. Being so, the records disclose that the respondent no.1 was prohibited from rendering the service for no fault on his part and on account of refusal on the part of the petitioner to allow

him to render the services. In such circumstances, no fault can be found with the Tribunal directing payment of full back wages.

5. For the reasons stated above, therefore, there is no case made out for interference in the impugned order under writ jurisdiction. Hence, the petition is rejected.

(R.M.S.KHANDEPARKAR, J.)